



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Department of Environmental Conservation

OCT 24 2013

Commissioner's Office

October 22, 2013

David Mears, Commissioner
Vermont Department of Environmental Conservation
1 National Life Drive, Main 2
Montpelier, VT 05620-3520

Dear Commissioner Mears:

In the course of the meetings between our agencies on the development of the new phosphorus TMDL for Lake Champlain, we have touched a number of times on the topic of what is often referred to as "reasonable assurance." This letter is intended to summarize our mutual understanding of what reasonable assurance means in general terms and EPA's views of how this applies in the specific context of developing the Lake Champlain TMDL.

A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. In broad terms, the total maximum daily load is comprised of allocations to point sources subject to regulation under the National Pollutant Discharge Elimination System (NPDES) permit program, referred to as the Waste Load Allocations, plus allocations for nonpoint sources, other sources not regulated under NPDES, and natural background, known as the Load Allocations, plus a margin of safety.

When a TMDL is developed for waters impaired by both point and nonpoint sources, and the Waste Load Allocations are based on an assumption that nonpoint source load reductions will occur in order to meet the Load Allocations, EPA's TMDL Guidance states that the TMDL must provide reasonable assurances that nonpoint source control measures will achieve expected load reductions in order for the TMDL to be approvable. This information is necessary for EPA to determine that the TMDL, including the point and nonpoint source allocations, has been established at a level necessary to achieve water quality standards.

In the context of the Lake Champlain TMDL, for any segment of the lake where Waste Load Allocations cannot, on their own, achieve water quality standards and therefore are dependent upon nonpoint source load reductions in order to attain standards, EPA will need to identify in the TMDL the reasonable assurances provided by various programs in Vermont that the nonpoint source reductions needed to meet the Load Allocations will be achieved (e.g., a state enforceable mechanism, assurance of funding for programs that will yield reductions). Without a demonstration of reasonable assurance that relied-upon nonpoint source reductions will

occur, the TMDL would have to assign commensurate reductions to the point sources, making Waste Load Allocations more stringent. The likely options for EPA to consider would be pushing Waste Water Treatment Plant discharges to the limit of available technology and requiring offsets for the remaining phosphorus, and expansion of permit coverage to bring more sources under direct regulatory control (e.g., expand MS4 coverage, use Residual Designation Authority to capture currently unregulated point source stormwater dischargers, designate certain AFOs to be CAFOs subject to NPDES permitting).

As we are learning from the modeling, nearly all of the segments will require some degree of reasonable assurance that Load Allocations will be achieved, and there may be some segments of the lake that will require maximizing reductions from every possible source in order to achieve water quality standards.

I hope this letter provides clarity for those of us working together to identify point source and nonpoint source reductions for each lake segment and for those who will need to support the measures we identify to achieve those reductions.

If you have any questions, please do not hesitate to call me at 617-918-1501.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen S. Perkins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen S. Perkins
Office of Ecosystem Protection